

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

YVETTE GBALAZEH, LEE SUNBURY, and §
FRED SIMS, on behalf of themselves and §
all others similarly situated, §

Plaintiffs, §

v. §

CIV. CASE NO. 3:18-cv-00076-N

CITY OF DALLAS, TEXAS, a municipality of §
the State of Texas, §

Defendant. §

JURY TRIAL DEMANDED

NOTICE OF CONSTITUTIONAL QUESTION

PLEASE TAKE NOTICE, pursuant to Rule 5.1(a) of the Federal Rules of Civil Procedure, Plaintiffs, by and through counsel, respectfully file this Notice of Constitutional Challenge of Statute with the Court and hereby provide notice to the Office of the Texas Attorney General. In support thereof, Plaintiffs states as follows:

1. On January 11, 2018, Plaintiffs filed an Original Class Action Complaint initiating the instant civil case against the Defendant challenging the constitutionality of Section 31-35 of the Code of Ordinances of the City of Dallas.

2. On May 14, 2018, Plaintiffs filed a First Amended Class Action Complaint against the Defendant which asserted additional claims challenging the constitutionality of Section 28-63.3 of the Code of Ordinances of the City of Dallas.

3. On August 21, 2018, Plaintiffs filed a Second Amended Class Action Complaint against the Defendant which asserted amended bases for their constitutional challenges to both Section 31-35 and Section 28-63.3.

4. On September 20, 2018, Defendant filed a Motion to Dismiss the Plaintiffs' Second Amended Complaint [Doc. 46]. In the Defendant's Brief in Support [Doc. 47], the Defendant alleged that Plaintiff Lee Sunbury lacked standing to bring a challenge to Section 31-35 and Section 28-63.3 for his February 28, 2018 citation (one of five solicitation citations which were received by Mr. Sunbury) because the citation was issued for violation of Texas Transportation Code § 552.007.

5. After receiving leave of the Court to amend their claims, on November 14, 2018, Plaintiffs filed a Third Amended Class Action Complaint [Doc. 59] against the Defendant which alleged constitutional violations against Plaintiffs through Defendant's enforcement of Section 552.007 against Plaintiff Sunbury and others in the class of persons who were cited or arrested by the Defendant for violation of Section 552.007. *See Jornaleros de Las Palmas v. City of League City*, 945 F. Supp. 2d 779 (S.D. Tex. 2013).

6. On April 2, 2019, the Court entered an Order [Doc. 82] ordering Plaintiffs to file a notice of constitutional question and serve the Texas Attorney General within fourteen (14) days of the Order per Rule 5.1(a) of the Federal Rules of Civil Procedure. Pursuant the Order, the Court also directed the clerk to certify to the Texas Attorney General that Plaintiffs are challenging the constitutionality of Section 552.007.

7. Specifically, in the Third Amended Class Action Complaint [Doc. 59], Plaintiffs challenge Section 552.007 under the First Amendment on the basis that it is facially over-broad and unconstitutional on its face.

8. Accordingly, Plaintiffs hereby file this notice of constitutional question and serve the Texas Attorney General with the same in the time period required by the Order [Doc. 82].

Dated: April 4, 2019.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 4, 2019 a true and correct copy of the foregoing Notice of Change of Address was served on Defendant's counsel of record via ECF and the Office of the Texas Attorney General as follows:

Via Certified Mail by Certified Process Server Pursuant to Tex. R. Civ. P. 103:
The Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

By: /s/ Ramon de Jesus Rodriguez
Ramon de Jesus Rodriguez
By: /s/ Christopher S. Murphy
Christopher S. Murphy